

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MOTIO, INC.

Plaintiff,

v.

BSP SOFTWARE, LLC, and
BRIGHTSTAR PARTNERS, INC.

Defendants.

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CIVIL ACTION NO. 4:12-CV-00647-RAS

JURY DEMANDED

[PROPOSED] SCHEDULING ORDER

After reviewing the report from the parties required by Fed. R. Civ. P. 26(f) and after consulting with the parties by mail or a scheduling conference, the court hereby enters the following Scheduling Order pursuant to this court's Local Rule CV-16 and Fed. R. Civ. P. 16:

1. Plaintiff shall comply with P.R. 3-1 and 3-2 (infringement contentions and supporting documentation) by February 22, 2013.
2. Other parties shall be joined pursuant to Fed. R. Civ. P. 19 and 20 by March 1, 2013. (A motion for leave to add parties is not necessary provided parties are added by this date, otherwise leave of court is required.)
3. Defendants shall comply with P.R. 3-3 and 3-4 (invalidity contentions and supporting documentation) by April 8, 2013.
4. Amended pleadings shall be filed by April 25, 2013. Any responsive pleading may be filed within fourteen (14) days after service of an amended pleading. (A motion for leave to amend is not necessary; however, this date should be at least 30 days before the deadline for filing motions listed in (7) below.)
5. The following schedule of deadlines is for claim construction issues only:

- a. On or before August 16, 2013, the parties shall exchange a list of claim terms or phrases that each party contends should be construed by the Court;
- b. On or before September 6, 2013, the parties shall exchange proposed, non-binding, and non-citable constructions of claim terms that each party contends should be construed by the Court;
- c. On or before September 20, 2013, the parties shall meet and confer in an attempt to narrow the list of terms or phrases needing construction and to agree on claim term definitions;
- d. On or before October 7, 2013, the parties shall file a Joint Claim Construction and Prehearing Statement;
- e. On or before November 4, 2013, the parties shall complete all discovery relating to claim construction;
- f. On or before November 22, 2013, Plaintiff shall file an opening claim construction brief;
- g. On or before December 6, 2013, Defendants shall file a responsive claim construction brief;
- h. On or before December 13, 2013, Plaintiff shall file a reply claim construction brief;
- i. On or before December 20, 2013, Defendants may file a sur-reply claim construction brief.

- j. On or before January 13, 2014, the parties shall file a joint claim construction chart;
 - k. Technical Advisor Submission: On or before September 27, 2013, the parties shall identify an agreed or proposed technical advisor. If the parties agree on a Technical Advisor, they shall so notify the court of the name, address, and telephone number of the Technical Advisor. Otherwise, each side shall submit the name, address, and telephone number of two (2) proposed Technical Advisors for the court's consideration. The submission shall be filed jointly, shall list the proposed Technical Advisors alphabetically, and shall not identify the proposing party. Additionally, the parties may not submit the name of a proposed technical advisor with whom a party to the litigation or counsel has had any professional relationship. The parties shall ensure that the technical advisor(s) is available for the *Markman* hearing, including the day before same to meet with the court, and at such other times that the court may request. The parties are directed to meet and confer on a preferred way to contact potential technical advisors to ensure impartiality of the Technical Advisor, but barring agreement of the parties, neither party shall have any *ex parte* contact with proposed, agreed, or possible technical advisors in this case except to confirm their availability.
 - l. A Markman hearing will be held on January 22, 2014 (or such other date as the Court may see fit).
6. The following schedule of deadlines is for expert witnesses only:

- a. Disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b) shall be made by the party with the burden of proof by May 12, 2014, and by the party without the burden of proof by May 26, 2014. Each party shall have 10 days to object to any other party's expert witnesses. Such objections shall be made by a motion and shall be accompanied by a copy of the expert's report in order to provide the Court with all of the information necessary to make a ruling on any objection. Any motion to strike or limit the expert report and preclude corresponding testimony of any other party's expert witness, including any *Daubert* motion, shall be filed by August 1, 2014.
 - b. Depositions of expert witnesses shall be complete prior to July 11, 2014.
7. All motions to transfer, motions to remand, motions to dismiss, motions for summary judgment, or other dispositive motions, shall be filed by August 1, 2014. Unless leave of court is first obtained, a party may file no more than one motion for summary judgment. (In order for the court to make a ruling on these motions before the Final Pretrial Conference and Trial Scheduling date, this date should be at least 90 days before the Final Pretrial Conference and Trial Scheduling date.)
8. Pretrial disclosure pursuant to Fed. R. Civ. P. 26(a)(3) shall be made by Plaintiff by October 20, 2014, and by Defendants by October 27, 2014.
9. All fact discovery shall be commenced in time to be completed by April 4, 2014. (This date should be no later than the deadline for filing dispositive motions.) In the event a discovery dispute arises, the court encourages the parties to use the

Discovery Hotline before filing a discovery motion to immediately obtain a ruling on discovery disputes. See Local Rule CV-26(e).

10. This case shall be mediated by November 1, 2013. If the parties agree on a mediator, they shall so notify the court of the name, address, and telephone number of the attorney-mediator by September 6, 2013. Otherwise, the court will select a mediator.
11. Two copies of the Joint Final Pretrial Order prepared in accordance with Local Rule CV-16(b) and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings of Fact and Conclusions of Law in nonjury cases) shall be delivered by Plaintiff to the Court by October 30, 2014. In order to enable Plaintiff to prepare and deliver the Joint Final Pretrial Order and Joint Proposed Jury Instructions and Verdict Form to the Court, and to enable Defendants and any third parties to participate in the preparation of such documents, Plaintiff shall provide Plaintiff's share of the necessary information to all other parties by October 20, 2014. Thereafter, Defendants and third parties shall provide their share of the information to Plaintiff by October 27, 2014.
12. Any motions in limine shall be filed by October 3, 2014. (This date should be at least 30 days prior to the Final Pretrial and Trial Scheduling date.) Responses to motions in limine shall be filed within the time provided by Local Rule CV-7.
13. This case is set for a Final Pretrial Conference and Trial Scheduling on November 4, 2014. (Select a date from the enclosed list of Final Pretrial Conference and Trial Scheduling Dates.)